LIM KIM CHUAN v. HARI SINGH

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat & Abdul Hamid F.JJ.) November 17, 1980 & January 10, 1981]
[Kuala Lumpur — Federal Court Civil Appeal No. 60 of 1980]

Landlord and Tenant — Claim for possession — Claim that rent in arrears — Fair rent — No agreement for increase in rent — Tenant subletting part of premises and receiving rent in excess — Claim based only on arrears of rent — Claim dismissed — Control of Rent Act, 1966, ss. 5, 7, 16(1)(a) & 16(1)(j).

Practice and Procedure — Pleadings — Claim for possession — Claim based on arrears of rent — Evidence that tenant had sublet part of premises and received rent in excess — Decision on pleadings — Control of Rent Act, 1966, ss. 5. 7 & 16.

In this case the respondent had let certain premises to the appellant. The premises were rent-controlled and the rent was $50 a month. The respondent sought to increase the rent to $125 a month but the respondent did not agree and there was no agreement in writing. The respondent claimed possession of the premises on the ground that rents at $125 a month were in arrears. There was evidence that the appellant had sublet a portion of the premises and had received rent in excess. The claim of the respondent was however based on the arrears of rent. The President of the Sessions Court rejected a suggestion at the trial that the claim was one under section 16(1)(j) of the Control of Rent Act, 1966, paid strict regard to the pleadings and held firmly that on the statement of claim the case for the respondent was under section 16(1)(a). He held that the lawful rent was not $125 and he accordingly dismissed the claim. On appeal, the learned judge of the High Court allowed the appeal, but when he furnished his grounds of decision, he said that he was unable to support his order.

Held, allowing the appeal: the learned President was entirely correct in deciding the case on the pleadings and the issues raised by them. In this case the lawful rent was not $125 p.m. and therefore the claim of the respondent was rightly dismissed.

FEDERAL COURT.

P.S. Maniam for the appellant.

Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): This is an appeal by a tenant from the decision of Ajaib Singh J. allowing the landlord's appeal from the judgment of the Sessions Court and ordering possession of the controlled premises that had been demised to be returned to the landlord. The decision to allow the appeal was given at the end of the day's argument but when he came to furnish his grounds of decision, the judge, entirely honestly, found himself unable to support his order and clearly said so.

The premises are controlled premises and come under the provisions of the Control of Rent Act No. 56 of 1966. Section 16 restricts the common law rights of a landlord to possession except under any of the cases in (a) to (m). Before any landlord can hope to recover possession of his controlled premises he must therefore be able to bring his claim within one of these listed cases.

The facts in this case are largely undisputed. The rents were $50 p.m. The landlord sought to increase the rents to $125 p.m. He tried to do this by agreement, which he initially obtained. He purported to do so under the provisions of section 7, of which it will be necessary to refer only to the following subsections:

"7. (1) The landlord of any controlled premises may negotiate with his tenant with a view to determining the fair rent thereof.

(2) Where such landlord and tenant at the conclusion of such negotiation come into an agreement, the fair rent so agreed upon by them shall be reduced in writing and shall be binding upon both of them.

(3) Where such landlord and tenant cannot come into an agreement within one month from the date when such negotiation began, either party may request a Rent Officer of the area where the controlled premises in question is situated to determine the fair rent thereof, and the said Rent Officer shall within one month of the date of such request determine the fair rent so requested."

But the tenant resiled from his agreement and the fair rent had not been reduced in writing. There was no binding agreement between them.

In the absence of any written agreement or any determination by a Rent Officer, on application by any party and consequently of any decision by the Rent Tribunal on his determination, the fair rent remains to be determined by the provisions of section 5(2), as amended, of the Act:

"5. (2) The amount of the fair rent of any controlled premises shall be, in the case where it is determined by an agreement between the landlord and the tenant, such sum as may be agreed upon between them; and in the case where it is determined by the decision of a Rent Officer such amount as may be fixed by him provided that the same is accepted by both parties; and in the case where it is determined by the order of the Tribunal, such sum as the Tribunal may consider reasonable:

Provided that the amount of the fair rent per mensem of any controlled premises shall not in any case exceed —

(a) one-twelfth of the annual value of the controlled premises; or

(b) the amount of the rent per mensem of the controlled premises immediately before the commencement of this Act together with an increase of 100 per centum thereof, whichever is the lesser.

In this subsection 'annual value' has the meaning assigned to it in the written laws in force with respect to local authorities."

Unfortunately for the landlord, in his fixation on $125 as the fair rent, he failed at all times to lead any evidence of what this fair rent is.

The landlord had, in the meanwhile, discovered that the tenant had sublet a part of the ground floor at $45 p.m. In his frustration at failing to obtain the tenant's agreement to an increase of rental from $50 to $125, the landlord took action. He served a notice to quit on the tenant and then issued out a writ of summons in the Sessions Court.

The only possible case open to him would be section 16(1)(j) which reads —

"(j) where the tenant having sublet the controlled premises or part thereof receives in respect of such subletting rents (exclusive of any payment for the services provided by any local authority) for any sublet part of the controlled premises in excess of the fair rent for that part or rents which including the apportioned rental or value of any part of the controlled premises retained by the tenant or not sublet by him exceed in the aggregate by more than ten per centum the rent of the whole premises.'

But this case was open to the landlord if his case had been put under this subsection and there was evidence before the court of the fair rent. But the landlord did not place his claim under this particular case. He proceeded entirely on section 16(1)(a) for rents lawfully in arrears at the inflated rate of $125 p.m. and

he even asked for double rents at twice this rate until possession was given. He would appear to think that the agreement though resiled and though not reduced into writing was sufficient to raise the fair rent to $125.

The President Sessions Court rejected a last minute suggestion that the claim was one under section 16(1)(j), paid strict regard to the pleadings as they stood and held firmly that on the statement of claim, the case for the landlord was under section 16(1)(a). He then came to the conclusion that the lawful rent was not $125 p.m., there had been no arrears of rents at this rate and he accordingly dismissed the claim, in our view, entirely correctly. He is entirely correct in deciding a case on the pleadings and the issues raised on them.

We accept the invitation of the High Court judge to over-rule his decision and we allow the appeal and restore the order of the President Sessions Court with costs here and in the courts below.

Appeal allowed.

Solicitors: *Sault & Co.; Gill & Tang.*

NATIONAL UNION OF COMMERCIAL WORKERS v. LINDETEVES-JACOBERG (M) SDN. BHD.

[F.C. (Suffian L.P., Chang Min Tat & Syed Othman F.JJ.) December 8, 1980 & January 15, 1981]
[Kuala Lumpur — Federal Court Civil Appeal No. 251 of 1979]

Administrative Law — Certiorari — Award of Industrial Court — No error of law affecting jurisdiction — Certiorari does not lie — Industrial Relations Act, 1967, s. 32(3)(a).

Industrial Law — Award of Industrial Court — No error of law affecting jurisdiction — Certiorari does not lie — Industrial Relations Act, 1967, s. 32(3)(a).

The respondents had retrenched some of their employees. The retrenchment was disputed by their Union and the dispute was reported to the Minister. The matter was eventually referred to the Industrial Court, which made their award, ordering reinstatement of the employees. The respondents applied to the High Court and obtained an order of *certiorari* quashing the award. In his judgment the learned judge said that the Industrial Court had erred in law and the error was apparent on the face of the record. The trade union appealed.

Held: in this case the Industrial Court had applied their mind to the proper question for the purpose of making their award; and had not asked themselves the wrong questions or taken into account matters which they should not have taken into account. Accordingly, they had not made an error of law which affected their jurisdiction and therefore their award could not have been quashed by *certiorari* proceedings.

Cases referred to:-

(1) *South-East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1980] 2 M.L.J. 165; [1980] 3 W.L.R. 318.

(2) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

(3) *Pearlman* v. *Harrow School* [1979] 1 Q.B. 56, 70.

The following cases were also cited in argument: *Selangor Omnibus Company Ltd.* v. *Transport Workers Union* [1967] 1 M.L.J. 280; *Sungei Wangi Estate* v. *Uni* [1975] 1 M.L.J. 136; *Mak Sik Kwong* v. *Minister of Home Affairs, Malaysia (No. 2)* [1975] 2 M.L.J. 175, 179; *Seereelall Jhuggroo* v. *Central Arbitration and Central Board* [1953] A.C. 151.

FEDERAL COURT.

D.P. Xavier for the appellants.

W.S.W. Davidson for the respondents.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): Cik Faridah binte Harun, Madam Tamishmathi d/o Kuppusamy and Miss Margaret De Cruz, typist, stenographer and typist respectively ("employees") employed by Lindeteves-Jacoberg (M) Sdn. Bhd., ("the company") were retrenched and received identically worded letters dated September 30, 1977, from the company saying that the company had to retrench them with effect from October 1, 1977, owing to a "serious downturn" in turnover and profits during the preceding years.

The retrenchment was disputed by their union, the respondents, and the dispute was reported to the Ministry but it could not be resolved. Eventually by letter dated November 19, 1977, the Minister for Labour and Manpower wrote to the President of the Industrial Court reporting that a dispute had arisen between the company and the union and referring the dispute to the Industrial Court under section 26(2) of the Industrial Relations Act, Act 177 ("the Act").

On November 11, 1978, the Industrial Court made their award, ordering reinstatement of all three employees.

On December 19 the company obtained leave to move the High Court for an order of *certiorari* to remove into the High Court the award of the Industrial Court for the purpose of its being quashed.

On August 30, 1979, the substantive motion was heard by Abdul Hamid J., as he then was, and in a reserved judgment delivered on December 6, he quashed the award, because, he said,

> "This court finds that the Industrial Court had erred in law and the error is apparent on the fact of the record."

The union appeals against that judgment.

That judgment had been delivered before the judgment of the Privy Council was delivered some six months later on June 24, 1980, in *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* ("Fire Bricks").[1]

The Privy Council there considered the effect of section 29(3)(a) of the Act (now section 32(3)(a)) which reads:

> "Subject to this Act, an award of the [Industrial] Court shall be final and conclusive, and no award shall be challenged, appealed against, reviewed, quashed or called in question in any court."

Several judges sitting singly in the High Court had held that the above provision did not prohibit them from quashing an award of the Industrial Court if it contained an error of law apparent on the face of the record.

But in *Fire Bricks*,[1] their Lordships held:

(1) that section 29(3)(a) did prohibit the High Court from quashing an award of the Industrial Court by *certiorari* proceedings, if it merely made an error of law on the face of the record which did not affect its jurisdiction;